IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2060 of 1991

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MESSRS ILA AUTOMOBILES - Petitioner(s)

Versus

MOHMAD HANIFKHAN V.PATHAN & 1 - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner No(s).: 1.

RULE NOT RECD BACK for Respondent No(s).: 1,2.
DS AFF.NOT FILED (R) for Respondent No(s).: 1,2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

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1.0 Mr. D G Chauhan learned advocate for the petitioner, under instructions from the petitioner, states that both

the respondents have expired, and therefore, the award of the Labour Court qua granting reinstatement with continuity in service cannot be implemented. However, the award qua granting 50% back wages is required to be considered on merits.

2.0 The petitioner has challenged the award dated 28.09.1990 passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 333 of 1978, whereby the petitioner was directed to reinstate the respondent with continuity of service and 50 % back wages.

3.0 In view of the statement made by Mr. Chauhan, the only question which is required to be considered by this Court is with regard to the grant of 50% back wages to the respondents. Having gone through the impugned award, it appears that the Labour Court has given the benefit of doubt to the respondents while awarding 50% back wages. No cogent reasons have been given by the Labour Court while awarding the said back wages to the respondents.

3.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has

no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award of the Labour Court qua granting 50 % back wages to the respondents is required to be quashed and set aside.

4.0 In above view of the matter, the impugned award of the Labour Court qua granting 50 % back wages to the respondents is quashed and set aside. So far as the direction with regard to reinstatement with continuity in service is concerned, the same is not considered in view of the death of the respondents. However, it shall be open to the legal heirs of the deceased - respondents to file appropriate application for claiming appropriate compensation from the petitioner. Such application, if any, to be filed within a period of three months from the receipt of writ of this order. Rule is made absolute to

the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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